IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1940/2007

(Devi Lal Vs. State of Rajasthan)

Date of Order : 13/12/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioner.

Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Learned public prosecutor accepts the notice for the State. With the consent of learned counsel for the parties, the criminal misc. petition itself is finally heard and decided at this stage.

By the instant petition under section 482 Cr.P.C. the petitioner has challenged order dated 21.09.2007 passed by Additional Chief Judicial Magistrate, Raisinghnagar (for short 'the trial court' hereinafter) whereby the trial court while allowing the application filed by the petitioner seeking interim custody of the tractor No. RJ 13-2 R-2608 and the trolley attached thereto,

ordered to release the tractor and the trolley in question in favour of the petitioner provided the petitioner furnishes a Supardginama of Rs. 30,000/- and a bank guarantee for the like amount on certain conditions incorporated in the order. Aggrieved by the order impugned directing the petitioner to furnish the bank guarantee, the petitioner has filed the instant petition.

I have heard learned counsel for the parties. Perused the order impugned as also the FIR.

It is contended by the learned counsel for the petitioner that the petitioner is the registered owner of the tractor in question which alleged to have been found carrying Beri/Kikar wood “babul” in contravention of the provisions of the Forest Act and the petitioner is not an accused in the case. It is also contended that as per the Notification dated 19.1.1991 issued by the State Government, Beri/Kikar “babul” has been exempted from the forest produce under the Rajasthan Forest (Produce Transit) Rules, 1957 (for short 'the Rules, 1957 hereinafter). Learned counsel for the petitioner submits that even the petitioner is prepared to furnish solvent security. In the facts and circumstances, therefore, learned counsel submits that the condition imposed by the trial court to furnish bank guarantee is onerous and the vehicle in question may be released in favour of the petitioner on Supurdginama.

Rule 3 of the Rules, 1957 pertains to exemption from forest produce and provides that in exercise of the powers conferred under the proviso to rule 2 of the Rules, 1957, the State Government exempts transportation of forest produce of the following species for destination within the State of Rajasthan; namely Eucalyptus, Su-Babul, Ardu, Vilaiti Babul, Israeli Babul, Deshi Babul and Shisham.

This Court in Jeet Singh Vs. State of Rajasthan 2006 (2) R.Cr.D. 274 (Raj.) without going into the question as to whether the goods being transported in the vehicle, in fact, is a forest produce or not as defined in the Rajasthan Forest Act, held that the condition of furnishing bank guarantee is onerous and accordingly the condition of bank guarantee has been set aside and vehicle has been ordered to be released on Supardginama.

Having regard to the facts and circumstances of the case, it is yet to be established in the trial as to whether the wood carried in the vehicle or transported, are forest produce or not, more particularly keeping in view the Notification dated 19.1.1991 as also Rules 3 of the Rules, 1957 by which the babul is exempted from the category of forest produce, in my view, directing the petitioner to give the bank guarantee of Rs. 30,000/- appears to be a condition onerous and therefore, the

ends of justice would be met if the vehicle in question is released in favuor of the petitioner on Supardginama and the solvent security.

In the result, the order impugned dated 21.09.2007 passed by the trial court is modified to the extent that instead of giving bank guarantee of Rs. 30,000/-, the tractor and the trolley in question shall be released in favour of the petitioner on Supardginama on his furnishing a personal bond of Rs. 1,00,000/- with a surety of the like amount with the condition that the petitioner will not transfer or alienate the same and shall produce when ordered by the trial Court.

With the above modification, the petition is disposed of.

(H.R.PANWAR),J.

Rp